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Supreme Court of the United States

October Term, 1929

No. 254

NEW JERSEY BELL TELEPHONE COMPANY,
Appellant,

vs.

STATE BOARD OF TAXES AND ASSESSMENT,
Appellee.

STATEMENT AS TO JURISDICTION ON APPEAL

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The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents:

I.

The Statutory Provisions Sustaining Jurisdiction.

(a) That part of Section 237 of the Judicial Code, as the same was amended by the Act approved February 13, 1925, and known as Chapter 229, Section 1, of 43 Stat. at Large, 937 (United States Code Annotated, Title 28, Section 344), which provides that:

> "A final judgment or decree in any suit in the highest Court of a State in which a decision in the suit could be had, * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution,

> treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

(b) The Act approved January 31, 1928 and known as Chapter 14 of 45 Stat. at Large, as amended by an Act approved April 26, 1928 and known as Chapter 440 of 45 Stat. at Large, 446, which provides:

> "That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.
>
> "Sec. 2 (as amended). The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

II.

Date of judgment and date of application for appeal.

The judgment sought to be reviewed by this appeal was entered on the 22nd day of May, 1929 (R. p. 48) by the New Jersey Court of Errors and Appeals, the highest Court of New Jersey in which a decision in this suit could be had.

The application for appeal was presented to the Chancellor of New Jersey, Presiding Judge of the said New Jersey Court of Errors and Appeals on the 25th day of June, 1929 (R. p. 51), and the Order Allowing Appeal was signed by the said Chancellor on the 25th day of June, 1929 (R. pp. 52-53).

III.

Nature of Case and Rulings Below.

This case involves the validity, under the Constitution of the United States, of an Act of the Legislature of the State of New Jersey approved March 23, 1900 and known as Chapter 195 of the Laws of that year (P. L. 1900, p. 502), as the same was amended by Acts approved March 13, 1917 (P. L. 1917, p. 42), March 4, 1918 (P. L. 1918, p. 907), March 30, 1927, (P. L. 1927, p. 567) and supplemented by the Act approved March 27, 1928 (P. L. 1928, p. 223), in so far as said Act provides for or authorizes the imposition and assessment of a tax based upon the gross monetary receipts of appellant derived from interstate as well as intrastate commerce.

Pursuant to the provisions of the above Act (as amended and supplemented), the State Board of Taxes and Assessment (of New Jersey) assessed a tax against appellant based on the total gross receipts derived from telephone messages transmitted and received in interstate as well as intrastate commerce (R. pp. 18 and 21-22). Appellant paid so much of said tax as was based on gross receipts derived from intrastate commerce, but conceiving that the part which was based upon receipts derived from interstate commerce was invalid under the Constitution of the United States, appellant, on or about June 9, 1928, caused a Writ of Certiorari (R. p. 1) to be issued out of the New Jersey Supreme Court to test the validity thereof. It was appellant's contention that the said State Board of Taxes and Assessment should not have construed the said Act of the Legislature of New Jersey (as amended and supplemented) to authorize the imposition of taxes upon gross receipts derived from interstate commerce, and that if the Act were so construed and applied,

it was repugnant to the Constitution of the United States (R. pp. 24-25).

The New Jersey Supreme Court, however, on or about December 6, 1928, affirmed the said tax and dismissed the Writ of Certiorari (R. pp. 36-42). The said Court held that neither the tax here in question nor the said Act (as amended and supplemented), pursuant to which the said tax was imposed, was repugnant to the Constitution of the United States. From the judgment of the New Jersey Supreme Court (R. p. 43), appellant herein appealed to the New Jersey Court of Errors and Appeals (R. pp. 44-46), which Court, on or about May 22, 1929 (R. p. 48), affirmed the said judgment of the New Jersey Supreme Court.

From the said judgment of the New Jersey Court of Errors and Appeals, appellant now appeals to the United States Supreme Court (R. pp. 49-51), and prays that the said judgment of the New Jersey Court of Errors and Appeals (the highest Court of the State in which a decision in this suit could be had) be reversed, upon the grounds (1) that the said Act of the Legislature of the State of New Jersey (as amended and supplemented), pursuant to which said tax was assessed and levied, and the said tax are invalid as in violation of Article I, Section 8, Paragraph 3 of the Constitution of the United States; and (2) that the said Act of the Legislature of the State of New Jersey (as amended and supplemented), pursuant to which said tax was assessed and levied, deprives appellant of its property without due process of law and denies to appellant the equal protection of the laws, in violation of Section 1, Paragraph 2 of the Fourteenth Amendment to the Constitution of the United States. (Assignment of Errors, R. pp. 49-51).

NOTE: All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the New Jersey Court of Errors and Appeals and on file with the Clerk of this Court. The record has not yet been printed.

IV.

Cases Believed to Sustain Jurisdiction.

The following decisions (among others) of this Court are believed to sustain its jurisdiction on this appeal:

1. Cases specifically holding that in cases such as this, Appeal (or Writ of Error) is the proper procedure:

Giozza v. *Tiernan*, 148 U. S. 657;
Ex parte Williams, 277 U. S. 267;
Great Northern Railway Co. v. *Minnesota*, 278 U. S. 503.

2. Cases involving the same questions as are presented in this case, in which jurisdiction was assumed without comment:

Philadelphia & Southern Steamship Company v. *Pennsylvania*, 122 U. S. 326;
Fargo v. *Hart*, 193 U. S. 490;
Galveston, Harrisburg & San Antonio Ry. v. *Texas*, 210 U. S. 217;
Meyer, etc. of Oklahoma v. *Wells Fargo & Co.*, 223 U. S. 298;
U. S. Express Company v. *Minnesota*, 223 U. S. 335;
Cudahy Packing Company v. *Minnesota*, 246 U. S. 450;
Millsaps College v. *Jackson*, 275 U. S. 129;
Northwestern Ins. Co. v. *Wisconsin*, 275 U. S. 136;
Blodgett v. *Silberman*, 277 U. S. 1;
Quaker City Cab Co. v. *Pennsylvania*, 277 U. S. 389;

Missouri-Kansas-Texas R.R. Co. v. *Mars,* 278 U. S. 258;
Metropolis Ferry Co. v. *Kentucky,* 279 U. S. 245.
Macallen Company v. *Massachusetts,* U. S. ; 49 Sup. Ct. Rep. 432;

It is respectfully submitted that this Court has jurisdiction of this appeal, by virtue of Section 237 of the Judicial Code, as amended by the Act approved February 13, 1925, and the Act approved January 31, 1928, as amended by the Act approved April 26, 1928.

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